Supreme Court, U. S.,
FILED
NOV 30 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1707

OHIO BUREAU OF EMPLOYMENT SERVICES

AND

ALBERT G. GILES,

Appellants,

VS.

LEONARD PAUL HODORY,

Appellee.

ON DIRECT APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Jurisdictional Statement Filed May 25, 1976

Probable Jurisdiction Noted October 4, 1976.

INDEX

	Page
Relevant Docket Entries	Index Page
Decision of the Bureau of Employment Services	i
Decision of the Bureau of Employment Services	ii
Decision of the Bureau of Employment Services	iii
Opinion and Order of the United States District Court for the Northern District of Ohio, Eastern Division	1
Judgment U.S. District Court	13
Order suspending injunction	14
Section 4141.01(I) Ohio Revised Code	15
Section 4141.01(B)(1)(b) Ohio Revised Code	15
Section 4141.01(B)(3)(a) Ohio Revised Code	17
Section 4141.01(B)(3)(g) Ohio Revised Code	20
Section 4141.28(H)(I)(J) Ohio Revised Code	25
Section 4141.29 Ohio Revised Code	26
Section 4141.301 Ohio Revised Code	34
Table 405—Disqualification for Unemployment Caused by Labor Dispute (U.S. Department of Labor)	35
Certification of States Unemployment Insurance Programs	37

Relevant Docket Entries:

January 27, 1975	—District Court Complaint
March 27, 1975	—Brief in Support of Jurisdiction
April 28, 1975	—Brief in Opposition to Jurisdiction
July 9, 1975	—Request for Admissions
September 24, 1975	—Answer to Requests for Admission
October 10, 1975	—District Court Brief of Plaintiff
October 20, 1975	—District Court Brief of Defendant
March 4, 1976	—Opinion and Order of Three Judge District Court.

Ohio Bureau of Employment Services

DETERMINATION OF BENEFITS

TO CLAIMANT: This notice is a determination of your claim. Your eligibility to receive benefits for this claim has been determined according to the decision shown in item 8.

1. Claimant's Name and Address: Leonard P. Hodory, 1810 Paisley St., Apt #24, Youngstown, Oh. 44515

2. Employer's Name and Address: United States Steel Corp., Youngstown District, Attn: A. Johnston, 1509 Muriel St., Pittsburgh, P.A. 15203

3. Date Mailed 1-3-75

4. Social Security Account Number 289 42 5007

5. Benefit Year Began 11-10-74

6. Local Office Number 809-1

7. THIS NOTICE IS A DETERMINATION OF:
- [X] (a) First Weekly Claim
- [ ] (b) Additional (Reopened) Weekly Claim
- [ ] (c) Continued Weekly Claim
- [ ] (d) Other—See Decision Below

8. ISSUE(S): LABOR DISPUTE 11-5-75

APPLICABLE LAW: . . .
Section 414.29(D)(1)(a) Ohio Law

A labor disupte started at coal mines owned and operated by U.S. Steel Corporation and claimant is unemployed because of this labor dispute. The law provides that no individual may serve a waiting period or be paid benefits for so long as his unemployment is due to a labor dispute.

Accordingly claim for week ending 11-16-74 is hereby disallowed.

Week ending 11-16-74 is further disallowed as claimant had earnings in excess of his weekly benefit amount.

Exhibit "2"

Ohio Bureau of Employment Services

DETERMINATION OF BENEFITS

TO CLAIMANT: This notice is a determination of your claim. Your eligibility to receive benefits for this claim has been determined according to the decision in item 8.

1. Claimant's Name and Address: Leonard P. Hodory, 1810 Paisley St. Apt. 24, Youngstown, Ohio 445[illegible]5

2. Employer's Name and Address:

3. Date Mailed 1-23-75

4. Social Security Account Number 289-42-5007

5. Benefit Year Began 11-10-74

6. Local Office Number 809-1

7. THIS NOTICE IS A DETERMINATION OF:
- ☐ (a) First Weekly Claim
- ☐ (b) Additional (Reopened) Weekly Claim
- ☒ (c) Continued Weekly Claim
- ☐ (d) Other—See Decision Below

8. ISSUE(S): LABOR DISPUTE 11-15-74 - 1-11-75 APPLICABLE LAW: . . . Sec. 4141.29(D)(1)(a) Ohio Law

During the period between 11-15-74 and 1-11-75 a labor dispute existed at coal mines owned and operated by United States Steel. This dispute caused a curtailment of operations at the United States Steel plant in Youngstown, Ohio, where claimant was employed. As a result of such curtailment, claimant was separated from his employment with United States Steel.

Section 4141.29 (D)(1)(a) Ohio law provides that no individual may serve a waiting period or be paid benefits for so long as his unemployment is due to a labor dispute that exists anywhere at an establishment owned and operated by his employer. Accordingly, claims for unemployment benefits for the following weeks are hereby disallowed.

Week Ending 11-23-74	Week Ending 12-21-74
Week Ending 11-30-74	Week Ending 12-28-74
Week Ending 12-07-74	Week Ending 01-07-75
Week Ending 12-14-74	Week Ending 01-11-75

Ohio Bureau of Employment Services

DETERMINATION OF BENEFITS

TO CLAIMANT: This notice is a determination of your claim. Your eligibility to receive benefits for this claim has been determined according to the decision shown in item 8.

1. Claimant's Name and Address: O. C. Webster, 111 Columbia St., Youngstown, Ohio 44510

2. Employer's Name and Address: Republic Steel Corp. Plt. 40

3. Date Mailed 1-27-75

4. Social Security Account Number 426-30-1364

5. Benefit Year Began 12-29-74

6. Local Office Number 869-0

7. THIS NOTICE IS A DETERMINATION OF:
- ☐ (a) First Weekly Claim
- ☐ (b) Additional (Reopened) Weekly Claim
- ☒ (c) Continued Weekly Claim
- ☐ (d) Other—See Decision Below

8. ISSUE(S): LABOR DISPUTE 11-17-74 - 1-11-75 APPLICABLE LAW: . . . Sec. 4141.29(D)(1)(a) Ohio Law

From 11-17-74 through 1-11-75 claimant was unemployed due to a labor dispute at coal mines owned and operated by Republic Steel Corp. The law provided that no individual may serve a waiting period or be paid benefits for so long as his unemployment is due to a labor dispute. Accordingly, claim for week ending 1-11-75 is hereby disallowed.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LEONARD PAUL HODORY,

Plaintiff,

v.

OHIO BUREAU OF EMPLOYMENT SERVICES, ET AL.,

Defendants,

Filed Mar. 5 9:13 AM '76
No. C 75-15 Y

MEMORANDUM OPINION AND ORDER

CELEBREZZE, Circuit Judge
LAMBROS, District Judge
KRUPANSKY, District Judge

Plaintiff, Leonard Paul Hodory (Hodory) filed the above-mentioned action, pursuant to 42 U.S.C. § 1983, on behalf of himself and all other persons similarly situated whose claims for unemployment benefits were denied or will be denied because of the operative effective of a labor dispute disqualification provision in § 4141.29(D)(1)(a) of the Ohio Revised Code.

Hodory challenged the constitutionality of § 4141.29(D)-(1)(a) on grounds that: the provision is in conflict with § 303(a)(1) of the Federal Society Security Act, 42 U.S.C. § 503(a)(1) and violates the Supremacy Clause to the United States Constitution; the labor dispute disqualification contained therein denies plaintiff and the class he seeks to represent the right to equal protection of the laws, guaranteed under the 14th Amendment to the United States Constitution; and the over-broad disqualification provision bears no real and substantial relation to the legislative purpose and constitutes a denial of due process of law guaranteed by the 14th Amendment to the United States Constitution.

Hodory requested the issuance of permanent injunctive relief to restrain the Ohio Bureau of Employment Services (Employment Bureau) and the Administrator, Albert E. Giles, from enforcing § 4141.29(D)(1)(a) and a declaration that the statute is unconstitutional. In addition, plaintiff sought past unemployment benefits for himself and the class he purports to represent which he alleged were denied by virtue of the application of that statutory provision.

This matter came on for hearing before this three-judge Court on October 23, 1975. The following are the Court's findings of fact and conclusions of law.

I. FINDINGS OF FACT

The operative facts as set forth herein were not disputed by the parties.

Hodory was laid off from his job as a Millwright apprentice with the United States Steel Corporation (U.S. Steel), Ohio Works, in Youngstown, Ohio on November 12, 1974. He applied for unemployment benefits on November 13, 1974 and was subsequently notified by the Ohio Bureau of Employment Services (Employment Bureau) that his claim was disallowed, pursuant to § 4141.29(D)(1)(a) O.R.C.

Section 4141.29(D)(1)(A) provides, in pertinent part:

> (D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:
>
> (1) for any week with respect to which the administrator finds that:
>
> (a) **His unemployment was due to a labor dispute** other than a lockout **at any factory, establishment, or other premises** located in this or any other state and **owned or operated by the employer by which he is or was last employed; and for so long as his unemployment is due to such labor dispute . . .** Emphasis added.)

It is clear that Hodory became unemployed through no fault of his own. He was one of approximately 1,250 United Steelworkers who was laid off by either U.S. Steel or Republic Steel Corporation at their plants in Ohio because of a nationwide strike by the United Mine Workers at coal mines owned and operated by these two steel companies. The steelworkers were in no way involved in the disqualifying labor dispute between the coal miners and the steel companies nor did they benefit from that dispute.

Hodory was denied unemployment benefits from November of 1974 through January 11, 1975, at which time the coal miners' strike was apparently terminated. The Employment Bureau's sole basis for denying Hodory's application for weekly benefits during this period was that such benefits were barred under the labor dispute disqualification found in § 4141.29-(D)(1)(a) O.R.C.

Hodory has taken an administrative appeal from the decision of the Employment Bureau, which appeal is still pending. It is being considered along with the appeals of the approximately 1,250 other claimants similarly situated as a "group appeal" by the administrative Board of Review.

Hodory resumed his employment on March 30, 1975 and is presently employed.

During the pendency of this lawsuit § 4141.29(D)(1)(a) O.R.C. was amended to provide, in pertinent part, that:

> . . . No individual shall be disqualified under this provision if: (i) HIS EMPLOYMENT WAS WITH SUCH EMPLOYER AT ANY FACTORY, ESTABLISHMENT, OR PREMISES LOCATED IN THIS STATE, OWNED OR OPERATED BY SUCH EMPLOYER, OTHER THAN THE FACTORY, ESTABLISHMENT, OR PREMISES AT WHICH THE LABOR DISPUTE EXISTS, IF IT IS SHOWN THAT HE IS NOT FINANCING, PARTICIPATING IN, OR DIRECTLY INTERESTED IN SUCH LABOR DISPUTE . . .

This amendment, Am. Sub. Senate Bill 173, however did not become effective until December 2, 1975, and is not to be retroactively applied.

II. CONCLUSIONS OF LAW

A. Availability of Relief in this Court

The first issue for this Court to consider is whether, in light of the pendency of the appellate administrative proceedings, this Court is precluded from adjudicating plaintiff's claims and from issuing injunctive relief against the defendants should the Court conclude that plaintiff is entitled to such relief on the merits of his claims.

Initially, it should be noted that there is no absolute bar in this case against the issuance of injunctive relief under the provisions of 28 U.S.C. § 2283, the Anti-injunction statute. *Mitchum* v. *Foster*, 407 U.S. 225 (1972); *Gibson* v. *Berryhill*, 411 U.S. 564 (1973). The Court must, nevertheless, consider the possible applicability of certain established principles of equity, comity, and federalism which would require this Court to refrain from determining the claims for injunctive relief.

The Supreme Court has recently articulated those circumstances in which such principles may suggest that a federal court refrain from exercising jurisdiction or abstain from determining claims for injunctive relief: 1) where a party has failed to exhaust available administrative remedies; 2) where a party seeks to enjoin a pending state criminal prosecution in the absence of special circumstances as set forth in *Younger* v. *Harris*, 401 U.S. 37 (1971); or where abstention and a stay in federal court is indicated to afford the state courts an opportunity to determine unsettled questions of state law prior to federal court intervention on the federal constitutional questions. *Gibson* v. *Berryhill, supra*, 411 U.S. at 573-574.

Upon due consideration, the Court concludes that the circumstances of the present case do not present a situation where dismissal or abstention would be appropriate. While

clearly the plaintiff herein has not exhausted the administrative remedies which are available under Ohio law, in *Gibson*, the Supreme Court stated specifically that administrative remedies need not be exhausted where the federal court plaintiff states a good cause of action under 42 U.S.C. § 1983. Moreover, in the instant action, exhaustion of the available administrative remedies would in all probability prove a futile effort to vindicate plaintiff's constitutional claims in this case. Section 4141.29(D)(1)(a), on its face, would appear to except the plaintiff from unemployment benefits for the period he was laid off due to coal miners' strike. In addition, the Employment Bureau has denied benefits to plaintiff, as well as the 1,250 United Steelworkers, who were similarly effected by the coal miners' strike, solely on the basis of the challenged labor dispute disqualification.

It was established at the hearing that the administrative appeal process does not permit the plaintiff to challenge the constitutionality of § 4141.29(D)(1)(a). The agency is bound by the prior Ohio court determinations as to the effect of that provision, and the Ohio courts have held the disqualification provision to be constitutional.[1] The plaintiff's failure to exhaust

---

[1] In an unpublished decision, the Court of Appeals of Montgomery County, Ohio, upheld the constitutionality of the provision. *Barnes* v. *Board of Review*, Case No. 3948, (1972). Moreover, the defendants cited to several Ohio Supreme Court cases in their brief and during oral argument in support of their position that § 4141.29(D)(1)(a) does not create an unconstitutional classification in violation of the Equal Protection clause of the 14th Amendment. *Cornell* v. *Bailey*, 163 Ohio St. 50 (1955); *Continental Can Company, Inc.* v. *Donahue*, 5 Ohio St. 2nd 224 (1966). In *Cornell* v. *Bailey*, the Supreme Court noted that it was the positive intent of the Ohio General Assembly to exclude those individuals who were involuntarily unemployed as well as those voluntarily unemployed as a result of a labor dispute from benefits. The Supreme Court concluded that such determination was a legislative function and that the only relief available to an involuntarily unemployed claimant was to seek a legislative amendment to the statute.

his administrative remedies therefore does not require a dismissal of his claims.

With regard to the Supreme Court's pronouncement in *Younger* v. *Harris, supra,* and the Court's subsequent decision in *Huffman* v. *Pursue,* 420 U.S. 592 (1975), the Court finds that the principles set forth in those cases do not necessitate that this Court exercise restraint in determining the issues raised herein or from issuing injunctive relief, should plaintiff be entitled to the same. While the *Huffman* decision broadens the judicially-created *Younger* doctrine to include a prohibition against federal court interference with certain ongoing *civil* proceedings in the state courts, the Supreme Court in *Huffman* made it clear that its holding was limited to the enjoining of ongoing state-initiated *judicial* proceedings and that such prohibition did not extend to an action brought under 42 U.S.C. § 1983 in which a party was challenging state administrative action in federal court. *Supra,* n.21.

Finally, this Court concludes that abstention would not be proper in this case. Section 4141.29(D)(1)(a) is not an ambiguous statute involving unsettled questions of state law which could be rendered constitutionally inoffensive by a limiting construction in the state courts. *Daniels* v. *Waters,* F.2d (6th Cir. 1975). It has been held that "[A]bstention should not be applied merely to await an attempt to vindicate a claim of the appellant in state court." *Gay* v. *Board of Registration Commissioners,* 466 F.2d 879, 885 (6th Cir. 1972). In the instant case, plaintiff has not yet even reached the first level of judicial review and under § 4141.28 of the Ohio Revised Code, he is required to undertake three administrative appeals before he will be entitled to file his challenge in the state courts, where, moreover, the issue as to the constitutionality of the labor dispute disqualification has apparently been settled.

Accordingly, for the reasons set forth above, the Court concludes that the principles of comity, equity, and federalism do not require that this Court dismiss the instant suit or abstain

from deciding the claims presented herein until such time as the state courts may have an opportunity to adjudicate the same or from issuing whatever relief may be appropriate upon its determination.

B. Class Certification

Plaintiff, in his complaint, defined the class he purports to represent herein as all persons whose claims for unemployment benefits have been or will be denied because of the operative effect of § 4141.29(D)(1)(a). While the Court does find that class certification of the claims for injunctive and declaratory relief and past benefits is appropriate, the class as defined by plaintiff in his complaint is over broad in light of the nature of plaintiff's claims and the requirements of Rule 23 of the Federal Rules of Civil Procedures.

The plaintiff's factual allegations and the undisputed evidence presented herein established that Hodory and approximately 1,250 members of the United Steelworkers in Ohio, who became unemployed through no fault of their own, were denied unemployment benefits by defendants for a specific period of time because of the labor dispute disqualification clause in § 4141.29(D)(1)(a), despite the fact that they may have been qualified in all other respects to receive the benefits.[2] With regard to this particular group of individuals, the Court finds that the prerequisites to certification of this action as a class action under Rule 23(a) have been met, and that the class action is maintainable under the provisions of Rule 23(b)(2).[3]

---

[2] At the hearing, plaintiff stated that the claims of some 6,100 Autoworkers in Youngstown, Ohio have been denied by defendants on the sole basis of the challenged disqualification provision. However, no further factual support was offered in this regard from which this Court can conclude that plaintiff's representation of these individuals in this suit would be proper under Rule 23.

[3] The fact that plaintiff seeks the award of past unemployment benefits does not effect the certification of this class as a Rule 23(b)(2) class. The monetary relief is essential in the nature of equitable

In light of the fact that the class is certified as a Rule 23(b)(2) class and the nature of the relief sought, the Court concludes that notice prior to the determination of the claims herein is not required.

C. Constitutional Validity of § 4141.29(D)(1)(a)

Plaintiff has challenged the constitutionality of § 4141.29(D)(1)(a) on several grounds. For the reasons set forth below, this Court concludes that the operative effect of that labor dispute disqualification provision violates the rights of plaintiff and the class he represents to equal protection and due process of law as guaranteed under the 14th Amendment to the United States Constitution and 42 U.S.C. § 1983.

Chapter 4141 of the Ohio Revised Code, which was enacted by the Ohio Legislative pursuant to the Federal Social Security Act, provides generally for the payment of benefits to unemployed individuals. In § 4141.29 it is indicated that the overall purpose of the legislation is to provide benefits as compensation for loss of remuneration due to **involuntary** total or partial unemployment. That provision contains a number of clauses which disqualify certain classes of unemployed individuals from receiving such benefits. In accordance with the apparent purpose of the enactment each of these classes, except one, disqualify only those individuals who become unemployed through some fault of their own.[4] Thus the provisions of § 4141.29(d)(1) reflect that an individual may not receive

relief rather than damages, and there is authority to support the maintainability of the class under 23(b)(2) in such circumstances. *Bermudez* v. *U.S. Department of Agriculture*, 490 F.2d 718 (D.C. Cir 1973); *see also, Pettway* v. *American Cast Iron Pipe Co.*, 494 F.2d 211 (5th Cir. 1974); 3B Moore's Federal Practice ¶23.40.

[4] The statute was previously held constitutional in the case of *Lasko* v. *Garnes*, No. C 72-1350 (N.D. Ohio, decided August 14, 1973), wherein the disallowance of benefits because of pregnancy was the basis of the challenge.

benefits if that person has been laid off for disciplinary reasons; or if the person quit work without just cause; or if the individual quit work to become married or because of marital, parental, filial or other domestic obligations, or become unemployed because of pregnancy; or if the person has made false statements in an attempt to obtain benefits; or if the person was discharged for dishonesty in connection with his most recent employment; or if the person has become unemployed as the result of a labor dispute. Therefore, the only class of unemployed individuals who are presently ineligible for benefits as a result of their having become unemployed involuntarily are those persons who fall within the labor dispute disqualification found in § 4141.29(D)(1)(a).[5]

A state legislature may create a classification which discriminates against certain individuals without violating the Equal Protection clause in the 14th Amendment, if that classification furthers a suitable governmental interest. *Police Department of Chicago* v. *Mosley*, 408 U.S. 92 (1972).

In the instant action, the defendants argued in their brief that the legitimate reasons for the enactment of § 4141.29-(D)(1)(a) were that:

1. Granting of benefits to workers laid off due to a strike in a parent company's subsidiary plant would in effect be subsidizing the union members;

2. Granting of benefits would place the employer at an unfair disadvantage in negotiations with the unions. If the financial burden of supporting its striking union members

[5] Of course, as of December 2, 1975 defendants will not be permitted to deny benefits to one unemployed due to a labor dispute unless an element of fault—"financing, participating in, or directly interested in"—demonstrated. However, the amendment does not moot the issues raised herein, since, as noted previously, it is not to be applied retroactively and will not effect the status of plaintiff and the class for the period during which they were denied benefits pursuant to § 4141.29(D)(1)(a).

is shifted from the unions' treasury to the State of Ohio, it's conceivable that no concerted effort to negotiate a fair settlement would be pursued until the employer reached a financial crisis, thereby yielding to unreasonable and economically unsound union demands to prevent bankruptcy;

3. The State has a legitimate purpose in protecting the fiscal integrity of its compensation fund. Strikes involving large corporations such as U.S. Steel, Republic Steel . . . and other corporate giants involve many hundreds of employees, even thousands. Benefits paid to workers resulting from labor strikes lasting for many weeks or months would deplete the unemployment fund.

The Court concludes that defendants have failed to advance reasons which would establish that the State of Ohio had a legitimate purpose for discriminating against the instant class in the payment of unemployment benefits. Each reason advanced contemplates that a union member, who is unemployed by virtue of a labor dispute between his employer and another union, has some control over, is at fault, or stands to benefit from that labor dispute. In fact, the evidence presented herein established that plaintiff and the class he represents were merely victims of the coal miners' strike, as is the case with any individual who has become unemployed because of adverse circumstances or conditions which may effect his employer's financial ability to continue to employ him. The fact that the plaintiff and the 1,250 class members also happen to be union members (of a different union) is certainly no legitimate reason, standing alone, to deny them benefits. Moreover, close scrutiny of the reasons for the State's classification reveals that what the state is actually intending to prevent is not the "subsidizing" of unemployed **union members** per se, but the subsidizing of union-initiated work stoppages.

Certainly the three purposes offered by defendants would be legitimate reasons for the State's denial of benefits to unemployed members of a union which is involved in a labor

dispute. However, the denial of benefits to plaintiff and the class herein in no way served the State's interest in seeking to avoid the subsidization of the coal miners' strike. Nor is it logical to conclude that payments of unemployment benefits to the **Steelworkers** would have placed U.S. Steel or Republic Steel at an unfair disadvantage in negotiation with the **coal miners' union.** Payments of funds to the steelworkers could hardly be deemed to put the coal miners in a position to refuse to negotiate with the steel companies until the companies reached a financial crisis, thereby causing the companies to yield to the unreasonable and economically unsound demands of the coal miners to prevent bankruptcy.

The Court finds, therefore, that the defendants have failed to demonstrate that the classification imposed by § 4141.29-(D)(1)(a) is justified by a legitimate state interest under the circumstances of this case, and, accordingly, the Court concludes that the application of the labor dispute disqualification to deny benefits to plaintiff and the class certified herein is violative of the Equal Protection clause of the 14th Amendment and plaintiffs' rights as guaranteed by 42 U.S.C. § 1983.

Similarly, the Court finds that the defendants have failed to demonstrate that the application of § 4141.29(D)(1)(a) with respect to plaintiff and the class bears a real and substantial relation to a legitimate state purpose and, therefore, the statutory provision as applied in this case to deny individuals who were unemployed through no fault of their own and neither participated in nor benefited from the labor dispute involving another union and their employer, also violates plaintiffs' right to due process of law guaranteed by the 14th Amendment and 42 U.S.C. § 1983.

Since the Court has declared the application of § 4141.29(D)(1)(a) to be constitutionally invalid as to plaintiff and the class members on equal protection and due process grounds, the Court need not reach the other issues raised by plaintiff in his complaint.

D. Relief

The Court finds that plaintiff and the members of the class of steelworkers, who were laid off for a specific period of time because of the labor dispute between their employer and the United Mine Workers and who, but for the labor dispute disqualification provision, § 4141.29(D)(1)(a), would have been entitled to collect unemployment benefits, are entitled to equitable relief in this case. Accordingly, the defendants, their agents and employees are enjoined from continuing to enforce § 4141.29(D)(1)(a) of the Ohio Revised Code so as to deny the unemployment benefits to plaintiff and the class members which they are entitled to receive. In this regard, the defendants shall pay those past unemployment benefits which would have been provided to each otherwise qualified claimant within this class to whom such benefits were denied on the sole basis of § 4141.29(D)(1)(a).

This case is hereby terminated.

IT IS SO ORDERED.

ANTHONY J. CELEBREZZE,
Circuit Judge
THOMAS D. LAMBROS,
District Judge
ROBERT B. KRUPANSKY,
District Judge

DATED: March 4, 1976

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LEONARD PAUL HODORY,
Plaintiff

v.

OHIO BUREAU OF EMPLOYMENT SERVICES, ET AL.,
Defendants.

Filed Mar. 9:13 AM '76
No. C 75-15 Y

JUDGMENT

CELEBREZEE, Circuit Judge
LAMBROS, District Judge
KRUPANSKY, District Judge

In accordance with the accompanying Memorandum Opinion and Order, the defendants are enjoined from continuing to enforce Ohio Revised Code § 4141.29(D)(1)(a) so as to deny the plaintiff and the class members the unemployment benefits to which they are otherwise entitled, and defendants are further ordered to pay past unemployment benefits which were denied plaintiff and members of the class solely on the basis of § 4141.29(D)(1)(a). Plaintiffs shall recover their costs of suit.

IT IS SO ORDERED.

ANTHONY J. CELEBREZZE,
Circuit Judge
THOMAS D. LAMBROS,
District Judge
ROBERT B. KRUPANSKY,
District Judge

DATED: March 4, 1976

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LEONARD PAUL HODORY,
Plaintiff-Appellee,

v.

OHIO BUREAU OF EMPLOYMENT SERVICES, ET AL.,
Defendants.

CELEBREZZE, Circuit Judge
LAMBROS, District Judge
KRUPANSKY, District Judge

Filed Apr. 6 2:45 PM '76
No. C 15-15 Y

ORDER

Pursuant to Rule 62(c), Federal Rules of Civil Procedure and upon request of the defendants, the Court hereby suspends the injunctive relief granted in the Judgment entered in the above-styled case on March 5, 1976. The stay shall continue in effect until the conclusion of the appeal taken by defendants. The defendants need not post bond.

IT IS SO ORDERED.

ANTHONY J. CELEBREZZE,
Circuit Judge
THOMAS D. LAMBROS,
District Judge
ROBERT B. KRUPANSKY,
District Judge

DATED: April 6, 1976

SECTION 4141.01(I), OHIO REVISED CODE

(I) "Interested party" means the administrator and any party to whom notice of a determination of an application for benefit rights or a claim for benefits is required to be given under section 4141.28 of the Revised Code.

SECTION 4141.01(B)(1)(b), OHIO REVISED CODE 4141.01(B)(3)(a), 4141.01(B)(3)(g)

(B)(1) "Employment" means:

(a) Service performed for wages under any contract of hire, written or oral, express or implied, including service performed in interstate commerce an service performed by an officer of a corporation, without regard to whether such service is executive, managerial, or manual in nature, and without regard to whether such officer is a stockholder or a member of the board of directors of the corporation;

(b) Services performed by an individual for remuneration unless it is shown to the satisfaction of the administrator that such individual:

(i) Has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact;

(ii) That such service is outside the usual course of the business for which service is performed; and

(iii) That such individual is customarily engaged in an independently established trade, occupation profession, or business.

(2) "Employment" includes:

(a) Service performed after December 31, 1971, by an individual in the employ of the state or any of its instrumentalities, or in the employ of the state and one or more other states or their instrumentalities, in the classified service as

defined in division (B) of section * 143.08 of the Revised Code or the services of employees covered by voluntary election, as provided under divisions (A)(4) and (5) of this section;

(i) Service performed after December 31, 1973, by an individual in the employ of any political subdivision of this state or any instrumentality of that political subdivision except for service performed as a substitute teacher employed by a public school district pursuant to section 3319.10 of the Revised Code.

(b) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization which is excluded from the term "employment" as defined in the "Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301, solely by reason of section 26 U.S.C.A. 3306(c)(8) of that act and is not excluded under division (B)(3) of this section;

(c) Service not covered under division (B)(1)(b) of this section which is performed after December 31, 1971:

(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, laundry, or drycleaning services, for his employer or his principal;

(ii) As a traveling or city salesman, other than as on agent-driver or commission-driver, engaged on a full-time basis in the solicitation on behalf of and in the transmission to his employer or his principal except for sideline sales activities on behalf of some other person of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale, or supplies for use in their business operations; provided that for the purposes of this subdivision, the services shall be deemed employment if the contractor of service contemplates that substantially all of the

---

* Section 143.08 changed to 124.11, Amend. S.B. No. 174 Eff 12/4/73.

services are to be performed personally by the individual himself and that the individual does not have a substantial investment in facilities used in connection with the performance of the services other than in facilities for transportation, and the services are not in the nature of a single transaction that is not a part of a continuing relationship with the person for whom the services are performed.

(d) An individual's entire service performed within or both within and without the state if:

(i) The service is localized in this state.

(ii) The service is not localized in any state, but some of the service is performed in this state and either the base of operations, or if there is no base of operations then the place from which such service is directed or controlled, is in this state or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

(e) Service not covered under division (B)(2)(d)(ii) of this section and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state, the Virgin Islands, Canada, or of the United States, if the individual performing such service is a resident of this state and the administrator of the bureau of employment services approves the election of the employer for whom such services are performed; or, if he is not a resident of this state but the place from which the service is directed or controlled is in this state, the entire services of such individual shall be deemed to be employment subject to sections 4141.01 to 4141.46 of the Revised Code; provided service is deemed to be localized within this state if the service is performed entirely within this state or if the service is performed both within and without this state but the service performed without this state is incidental to

the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions;

(f) Service of an individual who is a citizen of the United States, performed outside the United States except in Canada or the Virgin Islands, after December 31, 1971, in the employ of an American employer, other than service which is "employment" under subdivisions (d) and (e) of this division or similar provisions of another state's law, if:

(i) The employer's principal place of business in the United States is located in this state;

(ii) The employer has no place of business in the United States, but the employer is an individual who is a resident of this state; or the employer is a corporation which is organized under the laws of this state, or the employer is a partnership or a trust and the number of partners or trustees who are resident of this state is greater than the number who are residents of any other state; or

(iii) None of the criteria of subdivisions (B)(2)(f)(i) and (ii) of this section is met but the employer has elected coverage in this state or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under Chapter 4141. of the Revised Code.

(g) For the purposes of subdivision (B)(2)(f) of this section, the term "American employer" means an employer who is an individual who is a resident of the United States; or a partnership, if two-thirds or more of the partners are residents of the United States; or a trust, if all of the trustees are residents of the United States; or a corporation organized under the laws of the United States or of any state provided, the term "United States" includes the states, the District of Columbia, and the Commonwealth of Puerto Rico.

(h) Notwithstanding any other provisions of subdivisions (1) and (2) of division (B) of this section, service with respect to which a tax is required to be paid under any federal law

imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund, or service, which, as a condition for full tax credit against the tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301, is required to be covered under Chapter 4141. of the Revised Code.

(3) "Employment" does not include the following services if they are found not subject to the "Federal Unemployment Tax Act," 84 Stat. 713 (1970), 26 U.S.C.A. 3301, and if the services are not required to be included under division (B)(2)-(h) of this section:

(a) Agricultural labor;

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(c) Service performed prior to January 1, 1972, in the employ of any governmental unit, municipal or public corporation, political subdivision, or instrumentality of the United States or of one or more states or political subdivisions in the exercise of purely governmental functions. Service performed after December 31, 1971, in the employ of any instrumentality of the United States and the following services when performed for this state or a political subdivision as described in division (B)(2)(a) of this section except when performed for a public school district as described in section 3311.01 of the Revised Code, or a hospital or an institution of higher education as defined in divisions (X) and (Z), respectively, of this section as an elected official or any other employee not in the classified service as defined in division (B) of section 143.08* of the Revised Code.

(d) Service performed prior to January 1, 1972, in the employ of a private or parochial school, college, or university as a teacher, in research or experimental work, as an administrative officer, or as a member of the faculty. Service performed after December 31, 1971, in the employ of a nonprofit of

parochial school, not an institution of higher education as defined in division (Z) of this section;

(e) Service performed prior to January 1, 1972, as a short-time worker by a minor whose principal occupation is a student attending public or private school. Service performed after December 31, 1971:

(i) In the employ of a school, college, or university including those operated by the state or a political subdivision, if such service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university; or

(ii) By an individual under the age of twenty-two years who is enrolled at a nonprofit or public educational institution which normally maintains a regular facility and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has so certified to the employer, provided that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(f) Service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of eighteen in the employ of his father or mother;

(g) Service performed for one or more principals by an individual who is compensated on a commission basis, who in the performance of the work is master of his own time and efforts, and whose remuneration is wholly dependent on the amount of effort he chooses to expend, and which service is not subject to the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301. Service performed after December 31, 1971:

(i) By an individual for an employer as an insurance agent or as an insurance solicitor, if all this service is performed for remuneration solely by way of commission;

(ii) As a home worker performing work, according to specifications furnished by the employer for whom the services are performed, on materials or goods furnished by such employer which are required to be returned to the employer or to a person designated for that purpose.

(h) Service performed prior to January 1, 1972, in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefits of any private shareholder or individual, and the activities of which are confined exclusively to the rendition of service, or the production of commodities, for its respective religious, charitable, scientific, literary, or educational purposes. Service performed after December 31, 1971:

(i) In the employ of a church or convention or association of churches, or in an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(iii) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be

readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(i) Service performed after June 30, 1939, with respect to which unemployment compensation is payable under the "Railroad Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 351;

(j) Service performed by an individual in the employ of any organization exempt from income tax under section 501 of the "Internal Revenue Code of 1954," if the remuneration for such service does not exceed fifty dollars in any calendar quarter, or if such service is in connection with the collection of dues or premiums for a fraternal beneficial society, order, or association and is performed away from the home office or is ritualistic service in connection with any such society, order, or association;

(k) Casual labor not in the course of an employer's trade or business; incidental service performed by an officer, appraiser, or member of a finance committee of a bank, building and loan association, or savings association when the remuneration for such incidental service exclusive of the amount paid or alloted for directors' fees does not exceed sixty dollars per calendar quarter is casual labor;

(l) Service performed in the employ of a voluntary employees' beneficial association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if admission to a membership in such association is limited to individuals who are officers or employees of a municipal or public corporation, of a political subdivision of the state, or of the United States and no part of the net earnings of such association inures, other than through such payments, to the benefit of any private shareholder or individual;

(m) Service performed by an individual in the employ of a foreign government, including service as a consular or other officer or employee or of a nondiplomatic representative;

(n) Service performed in the employ of an instrumentality wholly owned by a foreign government if the service is of a character similar to that performed in foreign countries by employees of the United States or of an instrumentality thereof and if the administrator finds that the secretary of state of the United States has certified to the secretary of the treasury of the United States that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States and of instrumentalities thereof;

(o) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(p) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law, and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;

(q) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(r) Service performed in the employ of the United States or an instrumentality of the United States immune under the constitution of the United States from the contributions imposed by sections 4141.01 to 4141.46 of the Revised Code, except that to the extent that congress permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, sections 4141.01 to 4141.46 of the Revised Code, shall be applicable to such instrumentalities and to

services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, individuals, and services; provided that if this state is not certified for any year by the proper agency of the United States under section 3304 of the "Internal Revenue Code of 1954," the payments required of such instrumentalities with respect to such year shall be refunded by the administrator from the fund in the same manner and within the same period as is provided in division (E) of section 4141.09 of the Revised Code with respect to contributions erroneously collected;

(s) Service performed by an individual as a member of a band or orchestra; provided such service does not represent the principal occupation of such individual, and which service is not subject to the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301. Service performed after December 31, 1971, for a nonprofit organization, a hospital or institution of higher education of this state, or a political subdivision, as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work-relief or work-training:

(t) Service performed in the employ of a day camp whose camping season does not exceed twelve weeks in any calendar year, and which service is not subject to the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301. Service performed after December 31, 1971:

(i) In the employ of a hospital, if the service is performed by a patient of the hospital, as defined in division (X) of this section; or

(ii) For a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution.

(u) Notwithstanding any other provisions of division (B)(3) of this section, services which are excluded under

subdivisions (g), (j), (k), and (l) of this division, shall not be excluded from employment when performed for a nonprofit organization, as defined in division (Y) of this section or for a hospital or institution of higher education of this state or for a political subdivision.

SECTION 4141.28(H), (I), (J), OHIO REVISED CODE

(H) Any interested party may appeal the administrator's decision on reconsideration to the board and unless an appeal is filed from such decision on reconsideration with the board within fourteen calendar days after such decision was mailed to the last known post office address of the appellant such decision on reconsideration is final and benefits shall be paid or denied in accordance therewith.

(I) Requests for reconsideration or appeals may be filed with the board, with the administrator or one of his deputies, with an employee of another state or federal agency, or with an employee of the unemployment insurance commission of Canada charged with the duty of accepting claims. Any timely written notice stating that the interested party desires a review of the previous determination or decision therefor, shall be accepted.

(J) When an appeal from a decision on reconsideration of the administrator or deputy is taken, all interested parties shall be notified and the board or a referee shall, after affording such parties reasonable opportunity for a fair hearing, affirm, modify, or reverse the findings of fact and the decision of the administrator or deputy in the manner which appears just and proper. In the conduct of such hearing or any other hearing on appeal to the board which is provided in this section, the board and the referees shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure. The board and the referees shall take any steps in such hearing.

(1) The failure of the claimant or other interested party to appear at a hearing, unless he is the appealing party, shall not preclude a decision in his favor, if on the basis of all the information in the record, including that contained in the file of the administrator, he is entitled to such decision.

SECTION 4141.29, OHIO REVISED CODE

4141.29 Eligibility and qualification for benefits.

Each eligible individual shall receive benefits as compensation for loss of remuneration due to involuntary total or partial unemployment in the amounts and subject to the conditions stipulated in sections 4141.01 to 4141.46 of the Revised Code.

(A) No individual is entitled to a waiting period or benefits for any week unless he:

(1) Has filed a valid application for determination of benefit rights in accordance with section 4141.28 of the Revised Code;

(2) Has made a claim for benefits in accordance with section 4141.28 of the Revised Code;

(3) Has registered at an employment office or other registration place maintained or designated by the administrator of the bureau of employment services. Registration shall be made in person or in writing in accordance with the time limits, frequency, and manner prescribed by the administrator.

(4)(a) Is able to work and available for suitable work and is actively seeking suitable work either in a locality in which he has earned wages subject to Chapter 4141. of the Revised Code, during his base period, or if he leaves such locality, then in a locality where suitable work is normally performed.

The administrator may waive the requirement that a claimant be actively seeking work when he finds that an individual has been laid off and the employer who laid him off has notified the administrator within ten days after the layoff, that work is expected to be available for the individual within a specified number of days not to exceed forty-five calendar days following the last day the individual worked. In the event the individual is not recalled within the specified period, such waiver shall cease to be operative with respect to such layoff.

(b) The individual shall be instructed as to the efforts that he must make in his search for suitable work, except where the active search for work requirement has been waived under division (A)(4)(a) of this section, and shall keep a record of where and when he has sought work in complying with such instructions and shall, upon request, produce such record for examination by the administrator.

(c) An individual who is attending a vocational training course, approved by the Ohio worker training committee or the administrator, meets the requirement of this division, if such attendance was recommended by the administrator and the individual is regularly attending the course, and is making satisfactory progress.

(d) An individual who becomes unemployed while attending a regularly established school and whose base period credit weeks were earned in whole or in part while attending such school, meets the availability and active search for work requirements of division (A)(4)(a) of this section if he makes himself available on any shift of hours for suitable employment with his most recent employer or any other employer in his base period, or for any other suitable employment to which he is directed, under Chapter 4141. of the Revised Code.

(e) The administrator shall adopt such rules and regulations as he deems necessary for the administration of division (A)(4) of this section.

(5) Is unable to obtain suitable work.

(B) An individual suffering total or partial unemployment is eligible for benefits for unemployment occurring subsequent to a waiting period of one week and no benefits shall be or become payable during this required waiting period, but no more than one week of waiting period shall be required of any such individual in any benefit year in order to establish his eligibility for total or partial unemployment benefits.

(C) The waiting period for total or partial unemployment shall commence on the first day of the first week with respect to which the individual first files a claim for benefits at an employment office or other place of registration maintained or designated by the administrator or on the first day of the first week with respect to which he has otherwise filed a claim for benefits in accordance with the rules and regulations of the bureau of employment services, provided such claim is allowed by the administrator or his deputy.

(D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:

(1) For any week with respect to which the administrator finds that:

(a) His unemployment was due to a labor dispute other than a lockout at any factory, establishment, or other premises located in this or any other state and owned or operated by the employer by which he is or was last employed; and for so long as his unemployment is due to such labor dispute. No individual shall be disqualified under this provision if his employment was with an employer not involved in the labor dispute but whose place of business was located within the same premises as the employer engaged in the dispute, unless his employer is a wholly owned subsidiary of the employer engaged in the dispute, or unless he actively participates in or

voluntarily stops working because of such dispute. If it is established that the claimant was laid off for an indefinite period and not recalled to work prior to the dispute, or was separated by the employer prior to the dispute for reasons other than the labor dispute, or that he obtained a bona fide job with another employer while the dispute was still in progress, such labor dispute shall not render the employee ineligible for benefits.

(b) He has been given a disciplinary layoff for misconduct in connection with his work.

(2) For the duration of his unemployment if the administrator finds that:

(a) He quit his work without just cause or has been discharged for just cause in connection with his work, provided division (D)(2) of this section does not apply to the separation of a person under any of the following circumstances:

(i) Separation from employment for the purpose of entering the armed forces of the United States if he makes application to enter, or is inducted into such armed forces within thirty days after such separation;

(ii) Separation from employment pursuant to a labor-management contract or agreement, or pursuant to an established employer plan, program, or policy, which permits the employee, because of lack of work, to accept a separation from employment;

(iii) He has left his employment to accept a recall from a prior employer or to accept other employment as provided under section 4141.29' [4141.29.1] of the Revised Code, or has left employment which is or was concurrent employment where the remuneration, hours, or other conditions of such employment are substantially less favorable than his other work which was performed during such concurrent employment and where such employment, if offered as new work, would be

considered not suitable under the Provisions of dividions (E) and (F) of this section. Any benefits which would otherwise be chargeable to the account of the employer from whom an individual has left employment under conditions described in division (D)(2)(a)(iii) of this section, shall instead be charged to the mutualized account as provided in division (C) of section 4141.291 [4141.29.1] of the Revised Code.

(b) He has refused without good cause to accept an offer of suitable work when made by an employer either in person or to his last known address, or has refused or failed to investigate a referral to suitable work when directed to do so by a local employment office of this state or another state; provided, that this division shall not cause a disqualification for a waiting week or benefits under the following circumstances:

(i) When work is offered by his employer and he is not required to accept the offer pursuant to the terms of the labor-management contract or agreement, or pursuant to an established employer plan, program, or policy; or

(ii) When the individual is attending a vocational training course pursuant to division (A)(4) of this section except, in the event of a refusal to accept an offer of suitable work or a refusal or failure to investigate a referral, benefits thereafter paid to such individual shall not be charged to the account of any employer and, except as provided in division (B)(1)(b) of section 4141.241 [4142.24.1] of the Revised Code, shall be charged to the mutualized account as provided in division (C) of section 4141.25 of the Revised Code.

(c) Such individual quit work to marry or because of marital, parental, filial, or other domestic obligations or became unemployed because of pregnancy.

(d) He has knowingly made a false statement or representation or knowingly failed to report any material fact with the object of obtaining benefits to which he is not entitled.

(e) He became unemployed by reason of commitment to any penal institution.

(f) He became unemployed because of dishonesty in connection with his most recent or any base period work. Remuneration earned in such work shall be excluded from such individual's total base period remuneration for the purpose of determining the total benefits to which such individual is entitled under division (D) of section 4141.30 of the Revised Code, and shall be excluded from the maximum amount to be charged, under division (D) of section 4141.24 of the Revised Code, against the account of the employer who discharged such individual. In addition, no benefits shall thereafter be paid to such individual based upon such remunerations.

(E) No individual otherwise qualified to receive benefits shall lose the right to benefits by reason of a refusal to accept new work if:

(1) As a condition of being so employed he would be required to join a company union, or to resign from or refrain from joining any bona fide labor organization, or would be denied the right to retain membership in and observe the lawful rules of any such organization.

(2) The position offered is vacant due directly to a strike, lockout, or other labor dispute.

(3) The work is at an unreasonable distance from his residence, having regard to the character of the work he has been accustomed to do, and travel to the place of work involves expenses substantially greater than that required for his former work, unless the expense is provided for.

(4) The remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(F) In determining whether any work is suitable for a claimant in the administration of sections 4141.01 to 4141.46 of

the Revised Code, the administrator shall, in addition to the determination required under division (E) of this section, consider the degree of risk to the claimant's health, safety, and morals, his physical fitness for the work, his prior training and experience, the length of his unemployment, the distance of the available work from his residence, and his prospects for obtaining local work.

(G) "Duration of his unemployment," as used in this section, means the full period of unemployment next ensuing after a separation from any base period or subsequent work and until an individual has become re-employed in employment subject to sections 4141.01 to 4141.46 of the Revised Code, or the unemployment compensation act of another state, or of the United States, and until such individual has worked six weeks and has earned wages equal to three times his average weekly wage or three hundred sixty dollars, whichever is less, except for purposes of division (D)(2)(c) of this section, such term means the full period of unemployment next ensuing after a separation from such work and until such individual has become re-employed subject to the terms set forth above, and has earned wages equal to one half of his average weekly wage or sixty dollars, whichever is less, provided that in the case of a woman who became unemployed because of pregnancy such duration of unemployment shall continue until such time, after the date of her delivery, as she furnishes medical evidence that she is fully able to work, and that work with her former employer is no longer available, provided if she has made a bona fide change in residence which makes a return to work with her former employer unreasonable, because of distance, then her duration of unemployment may be ended the same as described in this division for disqualifications under division (D)(2)(c) of this section.

(H) Except as provided in division (B)(1)(b) of section 4141.241 [4141.24.1] of the Revised Code, if a claimant is disqualified under division (D)(2)(a), (c) or (e) of this

section, then benefits which may become payable to such claimant, which are chargeable to the account of the employer from whom he was separated under disqualifying conditions, shall be charged to the mutualized account provided in section 4141.25 of the Revised Code, such charges to be made in accordance with the charge sequence provided in section 4141.24 of the Revised Code; except, if the disqualification is for reason of pregnancy, under division (D)(2)(c) of this section, benefits shall be charged to the mutualized account only when the claimant has voluntarily discontinued her employment because of pregnancy.

(I) Benefits based on service in employment as provided in divisions (B)(2)(a) and (B)(2)(b) of section 4141.01 of the Revised Code, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to Chapter 4141. of the Revised Code; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education, as defined in division (Z) of section 4141.01 of the Revised Code, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms. Benefits based on service in an instructional, research, or principal administrative capacity for a public school district shall not be paid to any individual for any week of unemployment which begins during the period between two successive academic years or terms of the employing school district provided the individual was in employment with the school district at the termination of the first such academic year or term.

SECTION 4141.301, OHIO REVISED CODE

4141.301 Extended benefits.

(A) As used in this section, unless the context clearly requires otherwise;

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after whichever of the following weeks occurs first:

(i) A week for which there is a national "on" indicator; or

(ii) A week for which there is a state "on" indicator; and

(b) Ends with either of the following weeks, whichever occurs later:

(i) The third week after the first week for which there is both a national "off" indicator and a state "off" indicator; or

(ii) The thirteenth consecutive week of such period;

Except, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state, and that within the period beginning on the effective date of this section and ending on December 31, 1971, an extended benefit period may become effective and be terminated in this state solely by reason of a state "on" indicator and a state "off" indicator, respectively.

(2) A "national 'on' indicator" exists for a week if the United States secretary of labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment, seasonally adjusted, for all states equaled or exceeded four and five-tenths per cent.

* * *

(4) There is a "state 'on' indicator" for this state for a week if the administrator determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, not seasonally adjusted, under Chapter 4141. of the Revised Code:

* * *

Table 405.—Disqualification for Unemployemnt Caused by Labor Dispute

State (1)	Duration of disqualification: During stoppage of work due to dispute (29 States) (2)	Duration of disqualification: While dispute in active progress (12 States) (3)	Duration of disqualification: Other (11 States) (4)	Disputes excluded if caused by—: Employer's failure to conform to—: Contract (4 States) (5)	Disputes excluded if caused by—: Employer's failure to conform to—: Labor law (4 States) (6)	Disputes excluded if caused by—: Lockout (16 States) (7)	Individuals are excluded if neither they nor any of the same grade or class are—: Participating in dispute (43 States) (8)	Individuals are excluded if neither they nor any of the same grade or class are—: Financing dispute (30 States) (9)	Individuals are excluded if neither they nor any of the same grade or class are—: Directly interested in dispute (43 States) (10)
Ala.	—	x	—	—	—	—	—	—	—
Alaska	x	—	—	x	x	—	x	—	x
Ariz.	—	—	x[1]	x	x	—	x	x	x
Ark.	—	—	x[2]	—	—	x	x	—	x
Calif.	—	x	—	—	—	x[3]	—	—	—
Colo.	—	—	x[2]	—	—	x[10]	x	x	x
Conn.	—	—	x[1]	—	—	x	x	x	x
Del	x	—	—	—	—	—	—	—	—
D.C.	—	x	—	—	—	—	x	—	x
Fla.	—	x	—	—	—	—	x	x	x
Ga.	x[11]	—	—	—	—	x	x	x	x
Hawaii	x	—	—	—	—	—	x	—	x
Idaho	—	—	x[1]	—	—	—	x	x[4]	x
Ill.	x	—	—	—	—	—	x	x	x
Ind.	x[2 9]	—	—	—	—	—	x	x	x
Iowa	x	—	—	—	—	—	x	x	x
Kans.	x	—	—	—	—	—	x[7]	x	x[7]
Ky.	—	x	—	—	—	x	—	—	—
La.	—	x	—	—	—	—	x[4]	—	x[4]
Maine	x[5]	—	—	—	—	—	x	x	x
Md.	x	—	—	—	—	x	x	x	x
Mass.	x[5 11]	—	—	—	—	—	x	x	x
Mich.	—	—	x[2]	—	—	x[10]	x[4]	x[4]	x[4]
Minn.	—	x	—	—	—	x	x[12]	—	x[12]
Miss.	x	—	—	—	—	x	x	—	x
Mo.	x[2]	—	—	—	—	—	x	x	x
Mont.	x	—	—	—	x	—	x	x	x
Nebr.	x	—	—	—	—	—	x	x	x
Nev.	—	x	—	—	—	—	x	x	x
N.H.	x[2 5]	—	—	x	—	x	x	x	x
N.J.	x	—	—	—	—	—	x	x	x
N. Mex.	x	—	—	—	—	—	x	—	x
N.Y.	—	—	x[6]	—	—	—	—	—	—
N.C.	—	—	x[2]	—	—	—	—	—	—
N. Dak.	x	—	—	—	—	—	x	—	x
Ohio	—	—	x[1 10]	—	—	x	—	—	—
Okla	x	—	—	—	—	x	x	—	x
Oreg.	—	x	—	—	—	—	x	x	x
Pa.	x	—	—	—	—	x	x	—	x
P.R.	x	—	—	—	—	—	x	—	x
R.I.	—	—	x[6]	—	—	—	x[4]	x[4]	x[4]
S.C.	—	x	—	—	—	—	x	x[4]	x
S. Dak.	x	—	—	—	—	—	x	x	x
Tenn.	—	x	—	—	—	—	x	—	
Tex.	x[7]	—	—	—	—	—	x[7]	x[7]	x[7]
Utah	x[5 10]	—	—	—	x	x[3]	—	—	—
Vt.	x	—	—	—	—	—	x[4]	x[4]	x[2 4]
Va.	—	—	x[2]	—	—	—	x	x	x
Wash.	x	—	—	—	—	—	x	x	x
W. Va.	x[11]	—	—	x[8]		x	x	x	x
Wis.	—	x	—	—	—	—	—	—	—
Wyo.	x	—	—	—	—	—	x	x	x

(Footnotes on next page)

(Footnotes for Table 405)

[1] So long as unemployment is caused by existence of labor dispute.

[2] See text for details.

[3] By judicial construction of statutory language.

[4] Applies only to individual, not to others of same grade or class.

[5] Disqualification is not applicable if claimant subsequently obtains covered employment and: earns 8 x wba or has been employed 5 full wks., *Maine;* earns at least $900, *Mass.;* works at least 5 consec. wks. in each of which claimant earned 120% of wba, *N.H.;* earns $700 with at least $20 in each of 19 different calendar wks., *Utah.* However, BPW earned from ER involved in the labor dispute cannot be used to pay benefits during such labor dispute, *Mass.* and *Utah.*

[6] Fixed period: 7 consec. wks. and the waiting period or until termination of dispute, *N.Y.;* 6 wks. and waiting period, *R.I.* See Table 303 for waiting period requirements.

[7] So long as unemployment is caused by claimant's stoppage of work which exists because of labor dispute. Failure or refusal to cross picket line or to accept and perform available and customary work in the establishment constitutes participation and interest.

[8] Disqualification is not applicable if employees are required to accept wages, hours, or other conditions substantially less favorable than those prevailing in the locality or are denied the right of collective bargaining.

[9] Disqualification not applicable to any claimant who failed to apply for or accept recall to work with an ER during a labor dispute work stoppage if claimant's separation from ER occurred prior to work stoppage and was permanent.

[10] Applicable only to establishments functionally integrated with the establishments where the lockout occurs, *Mich.* Employee not ineligible: unless the lockout results from demands of employees as distinguished from an ER effort to deprive the employees of some advantage they already possess, *Colo.;* if individual was laid off and not recalled prior to the dispute, if separated prior to the dispute, if obtained bona fide job with another ER while dispute was in progress, *Ohio;* if the ER was involved in fomenting the strick, *Utah.*

[11] Disqualification ceases: when operations have been resumed but individual has not been reemployed, *Ga.;* within 1 wk. following termination of dispute if individual is not recalled to work, *Mass.* If the stoppage of work continues longer than 4 wks. after the termination of the labor dispute, there is a rebuttable presumption that the stoppage is not due to the labor dispute and the burden is on the ER to show otherwise, *W.Va.*

[12] Disqualification limited to 1 wk. for individuals not participating in nor directly interested in dispute.

CERTIFICATION OF STATES OF THE SECRETARY OF THE TREASURY

In accordance with the provisions of section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304 (c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending October 31, 1975, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act.

Alabama	Kentucky	Ohio
Alaska	Louisiana	Oklahoma
Arizona	Maine	Oregon
Arkansas	Maryland	Pennsylvania
California	Massachusetts	Puerto Rico
Colorado	Michigan	Rhode Island
Connecticut	Minnesota	South Carolina
Delaware	Mississippi	South Dakota
District of Columbia	Missouri	Tennessee
	Montana	Texas
Florida	Nebraska	Utah
Georgia	Nevada	Vermont
Hawaii	New Hampshire	Virginia
Idaho	New Jersey	Washington
Illinois	New Mexico	West Virginia
Indiana	New York	Wisconsin
Iowa	North Carolina	Wyoming
Kansas	North Dakota	

Signed at Washington, D.C. this 31st day of October, 1975.

JOHN T. DUNLOP,
Secretary of Labor

(FR Doc. 75-29727 Filed 11-4-15; 8:45am)

Federal Register, Vol. 40 No. 214—Wednesday, November 5, 1975, Page 51520.